IN THE SUPREME COURT OF IOWA

Supreme Court No. Supreme Court Case: 23-1220

Johnson County No. LACV083455

AMIE VILLARINI

Plaintiff-Appellant,

vs.

IOWA CITY COMMUNITY SCHOOL DISTRICT

Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF JOHNSON COUNTY
THE HONORABLE ANDREW CHAPPELL, PRESIDING

PLAINTIFF-APPELLANT'S FINAL BRIEF

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PROOF OF SERVICE AND CERTIFICATE OF FILING

I certify that on the 10th day of January, 2024, I served this document through the Iowa Supreme Court EDMS:

I further certify that on the 10th day of January, 2024, I filed this document with the Iowa Supreme Court EDMS.

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STATEMENT OF THE CASE

NATURE OF THE CASE

Plaintiff asserts that the district court erred in its ruling granting Defendant's Motion for Summary Judgment. As a result the case should be remanded to the district court and set for trial.

COURSE OF PROCEEDINGS AND DISPOSITION OF THE CASE

Amie Villarini filed suit against the Iowa City Community School District (hereinafter "ICCSD") on June 2, 2022. (App. 42). The following day Villarini filed an Amended Petition, as the original filing inadvertently excluded page two. (App. 45). The Amended Petition contained counts of defamation and wrongful termination. (App. 45). ICCSD moved for summary judgment, which was resisted by Villarini. (App. 59, 128). A hearing was held on the summary judgment motion on June 9, 2023, before the Honorable Andrew Chappell. (App. 14). The district court granted the motion and dismissed the case in a written Ruling on July 7, 2023 October 27, 2022. (App. 158).

Plaintiff filed her Notice of Appeal on August 2, 2023. (App. 40).

STATEMENT OF FACTS

Amie Villarini was the varsity girls' tennis coach at Iowa City West High School beginning in 2013. (App. 45). She was very successful as a coach. (App, 45). In 2021, some players and parents filed complaints with ICCSD against Villarini. (App. 46). The complaints were investigated by ICCSD and found to be without merit. (App. 46). At the April 12, 2022, meeting of the ICCSD School Board meeting ("board meeting"), several former players spoke out against Villarini, and made a number of serious allegations that were not true. (App. 46). The statements included allegations that Villarini was a liar; that she was a predator; that she had inappropriately touched student-athletes; and that she touched student-athletes "where no one should be touched"; and that she touched student-athletes under their clothing and close to their genitals (App. 132).

Villarini was placed on leave by ICCSD on April 13, 2022, one day after students made allegations and complained about her at the board meeting. (App. 309-310). The only formal complaints ever made about Villarini's role as West High School tennis coach were determined to be unfounded after the ICCSD's own investigation. (App. 136; App. 65, 66). ICCSD, in hindsight and pretextually, claimed Villarini was placed leave due to social media posts. Villarini was not

placed on leave due to alleged social media posts, which in fact did not mention any student names, use the word "student", mention West High School, ICCSD, or even state the word "tennis" and in no way violated any policy, written or unwritten, about the use of private social media accounts by ICCSD employees. (App. 136). One post references coaching only in generic terms (App. 67). The other doesn't even reference athletics at all, and is a post in memory of her grandmother. (App. 68). Villarini's personal social media accounts were not public. (App. 136). There is a difference between a coach's official school social media account and their private accounts. (App. 287-288). There were no concerns with anything Villarini posted on her ICCSD social media. (App. 297). Villarini was placed on leave due to the public statements and accusations at the board meeting of April 12, 2022. (App, 136; App. 310). In fact, Ramey ordered Villarini be put on leave hours after the board meeting, and before he had even seen Attachment C, the second purported post. (App. 329; App, 304-305). The ICCSD admits it would have been improper to place Villarini on leave due to the public statements and accusations at the board meeting as they had already been investigated and were determined to be unfounded. (App. 378). As a result of being placed on leave in the wake of the public accusations Villarini sustained damages to her career and her reputation. (App. 136).

By allowing the video of the school board meeting to remain up on its You Tube page, unedited, and without any disclaimer, the ICCSD endorsed the comments made there. (App. 136). The ICCSD was aware that Villarini and her representatives requested on many occasions that the video be removed, redacted, or disclaimed. (App. 343-344). To this day the video remains posted on YouTube by the ICCSD, unedited, unredacted, and without any disclaimer/renunciations: https://www.youtube.com/watch?v=z0hbHTxf6W0

"The comments and allegations that the students made were pretty damning towards Mrs. Villarini." (App. 299). Either during the board meeting when the accusations were made, or just afterwards, Ramey emailed Villarini's supervisor, Athletic Director Huegel, and Eric Howard, who had investigated the original complaints, and requested reprimands or evaluations done on Villarini in the last three years. (App. 329). The ICCSD stated under oath that it denied that the statements regarding Villarini at the board meeting were untrue. (App. 410). The district further went on to state, under oath, that "Defendant believes the complaints [at the April 12, 2022 meeting] were truthful" thus adopting the statements noted above. (App. 410).

The speakers at the school board meeting had an ulterior motive to get Villarini fired. (App. 235). The allegations made in the meeting were not what

the students had shared with AD Huegel when they went to him with concerns. (App. 300). Shortly after Villarini was put on leave, the West High Principal, Mitch Gross, was at a meeting discussing Villarini being put on leave and the comment made about her at the school board meeting, and he told the athletic director of Cedar Falls High School that he (Gross) might have to end up coaching. (App. 253-254).

The allegations made at the school board meeting and the subsequent availability of the video on the internet would make it more difficult for Villarini to get a job in tennis in eastern Iowa. (App. 255). Villarini wanted to remain the West High Girls Tennis Coach and would have so remained, if she had been given the opportunity. (App. 136). Even though ICCSD coaching contracts were for one year, if the coach wanted to continue the general practice was to renew the contract. (App. 259). Villarini's immediate supervisor, West High Athletic Director Craig Huegel, would have renewed her contract for the 2022-2023 school year if it was up to him. (App. 314). ICCSD has admitted that the statements made at the board meeting would "injure [Villarini] in the maintenance of [her] business or occupation." (App. 305; App. 381-382). At least one district parent contacted the ICCSD after the meeting and referred to Villarini as a "sexual predator." (App. 311-312; App. 332-334).

ROUTING STATEMENT

Pursuant to Iowa Rules of Appellate Procedure 6.1101(3) and 6.903(2)(d), Appellant makes the following Routing Statement: This case should be transferred to the Iowa Court of Appeals as it involves the application of existing legal principles.

ARGUMENT

I. SCOPE AND STANDARD OF REVIEW AND PRESERVATION OF ERROR

A. Scope and Standard of Review

The standard of review for district court rulings on summary judgment is for correction of errors of law. Iowa R. App. P. 6.907; *Kunde v. Estate of Bowman*, 920 N.W.2d 803, 807 (Iowa 2018) (citing *Mason v. Vision Iowa Bd.*, 700 N.W.2d 349, 353 (Iowa 2005)). Evidence is viewed in the light most favorable to the party opposing summary judgment. *Id.* (citing *Murtha v. Cahalan*, 745 N.W.2d 711, 713–14 (Iowa 2008)).

B. Preservation of Error

Villarini preserved error through her written resistance to the Motion for Summary Judgment and supporting documents, as well as at oral arguments at the hearing on the motion. (App. 128; App. 130; App. 138; App. 14). *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002).

II THE DISTRICT COURT ERRED IN GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

In order to prevail on a motion for summary judgment, the moving party must establish the absence of genuine issues of material fact. Iowa R. Civ. P. 1.981(3). An issue of fact is "material" when it might affect the outcome of the suit. *Fees v. Mut. Fire & Auto. Inc. Co.*, 490 N.W.2d 55, 57 (Iowa 1992). A "genuine issue" exists if a reasonable minds could differ on how the issue should be resolved. *Knapp v. Simmons*, 345 N.W.2d 188, 121 (Iowa 1984). Even if the facts are undisputed, summary judgment is not proper if reasonable minds could draw from them different conclusions. *Walker Shoe Store, Inc. v. Howard's Hobby Shop*, 327 N.W.2d 725, 728 (Iowa 1982). In ruling on a motion for summary judgment, the court is required to examine the record before it in a light most favorable to the party opposing the motion. *Sandbulte v. Farm Bureau Mut. Ins. Co.*, 343 N.W.2d 457, 464 (Iowa 1984). Every legitimate inference that reasonably can be deduced from the evidence should be afforded the resisting party. *Scheckel v. Jackson County, Iowa*, 467 N.W.2d 286, 289 (Iowa Ct. App. 1991). If two legitimate, conflicting inferences are present, the court should rule in favor of the non-moving party. *Eggiman v. Self-Insured Services Co.*, 718 N.W.2d 754, 763 (Iowa 2006).

A. SLANDER

Iowa law is clear that an attack on the integrity and moral character of a party is slanderous per se. *Wilson v. IBP, Inc.*, 558 N.W.2d 132, 139 (Iowa 1996). In *Wilson*, the court held that a jury could find an employer accusing an employee of being untruthful slanderous per se. *Id.* The district court agreed the statements were defamatory per se. (App. 166). However, the district court found that because the statements were made by students at a school board meeting, ICCSD was not responsible. (App. 168-170). The district court criticized "Villarini's brief" because it allegedly "ignores the elephant in the room because the District itself did not itself utter the statements." (App. 167). The district court turned the summary judgment standard upside-down. The reason Villarini did not spend substantial time on that issue in her brief is simply because ICCSD did not argue that point. In fact, in its brief in support of its motion, ICCSD agreed with Villarini that "Republication of defamatory statements occurs and can give rise to a cause of action separate from that created by the initial statement." (App. 73). The district court, without citing any authority, seems to take the position that republication of defamatory material is not a valid cause of action. (App. 167). The district court found that Villarini had, through counsel requested that ICCSD

address the comment made at the meeting, either by removing them, deleting them, or providing a disclaimer. (App. 162). It is this utter disregard by ICCSD that amplifies the defamation. ICCSD was informed of the defamatory nature of the comments that ICCSD had itself published on the internet, and despite that notice, failed to act in any way.

The district court goes on to incorrectly state that Villarini is relying on "the idea that its republishing of those statements in its minutes and on its YouTube channel created an independent claim of defamation against it." (App. 167). Villarini never argued that ICCSD keeping minutes of its board meeting was defamation. It is unclear to Villarini where the district court got that notion, except to set up as a straw man to be knocked down by the requirements in the Iowa code that school boards keep minutes. (App. 168). Villarini does not claim that ICCSD keeping minutes of the board meeting defamed her in any way. The only claim Villarini made was that ICCSD defamed her by publishing and preserving the defamatory comments on the internet for the world to see. The district court goes on to find great significance in the fact that neither party referenced case law finding a governmental entity liable for defamation in this context. (App. 168). Again, this was not raised by ICCSD, but by the Court.

The district court appears to go on to hold that under its analysis, not pled or argued by ICCSD, no governmental entity could ever be held liable for defamation for republishing anything said at any public meeting. (App. 169). The district court relies on the concept of qualified privilege, citing an unpublished Iowa Court of Appeals opinion, *Murken v. Sibbel*, No. 00-1239, 2001 WL 1451051 (Iowa Ct. App. Nov. 16, 2001). In that very opinion, the court states, "Qualified privilege is an affirmative defense which must be pled and proven." (*Id.* (citing *Vinson v. Linn-Mar Cmty. Sch. Dist.*, 360 N.W.2d 108, 116 (Iowa 1984)). In this case, ICCSD never pled qualified privilege as an affirmative defense, much less proved it. (App. 49). On this basis alone, the district court's ruling must be reversed.

In addition, the district court's conclusion that the *Murken* case is "a similar situation" is also wanting. (App. 169). In short, *Murken* involved a suit by a high school baseball coach for slander against a parent of a baseball player, and comments made in a private meeting of players' parents. Perhaps the most significant distinction is that in this case the slander was republished by ICCSD for the world to see on the internet, where it remains today. *Murken* involved a group of parents meeting in private to discuss concerns about a coach. This case involves former players attending a public meeting, spreading defamatory lies about their former coach with the apparent intent to get her fired, which attempt

was successful. Even if the affirmative defense of qualified immunity had been pled, summary judgment should not have been granted.

The district court, relying on the *Murken* decision, found that the "record is literally devoid of" evidence of actual malice. (App. 169). This is another illustration of the problems that arise when the court, as here, grants summary judgment on a basis not advanced by the defense and not raised in the hearing: the plaintiff has no chance to respond. Because, as the district court agreed, the statements were slander per se, there was no need for Villarini to show malice. *Stevens v. Iowa Newspapers, Inc.,* 728 N.W.2d 823 (Iowa 2007). This new theory uncovered by the district court robbed Villarini of the opportunity to respond and provide support for her arguments. In fact, ICCSD did have actual malice. "Actual malice occurs when a statement is made with knowledge that it is false or with reckless disregard for its truth or falsity." *Kelly v. Iowa State Educ. Ass'n*, 372 N.W.2d 288, 296 (Iowa Ct. App. 1985). As noted above, ICCSD was informed a number of times by Villarini and her representatives that the allegations made against her at the meeting were false and slanderous, yet ICCSD consciously and intentionally continued to republish those statements by leaving the unmodified video without comment on its YouTube channel, where it remains to this day. Furthermore, the underlying comments were clearly made with actual

malice: the former players, unhappy that their complaints had been found to be without merit by ICCSD, took their allegations public and exaggerated them in a naked attempt to get Villarini fired.

The district court also erroneously relied on language from the Restatement and a law review article relating to the "fair report" privilege. (App. 168-169). First, the district court notes that that privilege has never been adopted by Iowa's appellate courts. (App. 169). Second, that privilege "is commonly exercised by newspapers and other media in the reporting of . . . proceedings at all levels of government." Patrick J. McNulty, *The Law of Defamation: A Primer for the Iowa Practitioner*, 44 Drake L. Rev. 663 (1996). This privilege concerns the accuracy of reporting of government proceedings, which is not what we have in this case. The district court erroneously found ICCSD was entitled to judgment as a matter of law.

Though the district court relied on different arguments and cases than those argued and cited by ICCSD, Villarini will also respond to the arguments made by ICCSD. It relied heavily on a federal district court decision for its position that, essentially, a school district cannot control any comment made by anyone at any of its meetings. (App. 82-122). Such reliance was both misplaced and overstated the breadth of the court's ruling in that case. The court in *Cawiezell-Sojka v.*

Highland Comm. Sch. Dist. was faced with a situation much different than this case. *Cawiezell-Sojka v. Highland Comm. Sch. Dist.*, No. 3:17-cv-00020-RGE-SBJ (Feb. 21, 2018, U.S. Dist. Court, S.D. Iowa). The Highland school district had a formal policy that allowed positive comments about district employees, but prohibited negative comments. (*Id.* at 21). Further, the court did not decide the merits of the claim, but merely whether there were allegations sufficient to survive a motion to dismiss. *Id.* at 22-24. The ICCSD chose to interpret this decision as one that would bar it from deleting or modifying any comments ever made at any of its board meetings. The case does not go nearly that far, and merely states that a district cannot bar ahead of time negative comments on staff if it allows positive comments. *Id.* There is no such issue in this case. *Cawiezell-Sojka* did not involve defamatory speech or the broadcast/republishing of same. Here there is no issue of prior restraint on free speech, or even any issue of speech allowed at a board meeting, but merely the publication or modification of certain defamatory speech after it has been spoken.

ICCSD summarized its analysis of the First Amendment issues by saying "It's all very hazy." (App. 72). In fact, it is not. ICCSD seems to think that any statement in the public comment section of a school board meeting is sacrosanct, regardless of how offensive, wildly untrue, or injurious. Allegations lodged at

Villarini at the ICCSD board meeting included being a liar, inappropriately touching students, and being a predator, which her supervisor considered a defamatory comment (App. 332-333). These were not statements of opinion, but allegations of specific illegal conduct and an attack on Villarini's integrity and moral character, and therefore not protected by the First Amendment.

The district court also improperly gave weight to the idea that because neither side was able to provide a case addressing this exact issue, either to support ICCSD's position or Villarini's position, when counsel were asked at the hearing, that somehow that is a basis to grant summary judgment. (App. 168; App. 31-32).

Genuine issues of material fact prevented the entry of summary judgment on Villarini's defamation claims, and ICCSD was not entitled to judgment as a matter of law.

B. BREACH OF CONTRACT/VIOLATION OF PUBLIC POLICY

There are genuine issues of material fact as to why Villarini was placed on leave. Her immediate supervisor, Craig Huegel, the West High AD, says it was because of the allegations made at the meeting. (App. 310). Villarini agrees. Chace Ramey claims it was because of social media posts, but his own emails to

Huegel the night of the school board meeting and the following afternoon belie that claim. (App. 329). The ICCSD admits it would have been improper to place Villarini on leave due to the allegations made at the board meeting, because those allegations had already been investigated and dismissed by the ICCSD itself. (App. 378).

Villarini was placed on leave due to the public statements and accusations at the board meeting, which had already been investigated by ICCSD and determined to be without merit. (App. 136). As a result of being placed on leave the day after the public accusations Villarini sustained damages to her career and her reputation.

The elements of a claim for wrongful termination in violation of public policy are: "(1) the existence of a clearly defined and well-recognized public policy that protects the employee's activity; (2) this public policy would be undermined by the employee's discharge from employment; (3) the employee engaged in the protected activity, and this conduct was the reason the employer discharged the employee; and (4) the employer had no overriding business justification for the discharge." *Ferguson v. Exide Technologies, Inc.*, 936 N.W.2d 429, 432 (Iowa 2019) (citations omitted). Wrongful termination in violation of public policy claims can be brought both by at-will employees and by

contract employees. *Ackerman v. State*, 913 N.W.2d 610, 615-21 (Iowa 2018). These claims differ from contract claims, as they enforce, "the communal conscience and common sense of our state in matters of public health, safety, morals, and general welfare." *Id.* at 617 (citation omitted). "As opposed to merely vindicating the private interests of the parties, wrongful-discharge claims vindicate the greater harm to society when an employee is punished for acting in accordance with a clear public policy." *Id.*. A contract that is breached in violation of public policy can also be a breach of contract claim. "[W]hen an employee is discharged in violation of public policy, the employer commits a wrong both in contract and in tort." *Ackerman v. State*, 913 N.W.2d 610, 619 (Iowa 2018).

As noted above, ICCSD admits that it would have been improper to put Villarini on leave due to allegations it had already investigated and determined were without merit. Yet that is what the evidence shows is exactly what ICCSD did. As a result of the public pressure related to the complaints at the board meeting, the ICCSD put Villarini on leave for allegations it knew were unfounded and baseless. Parents and students made baseless complaints against the coach; those complaints were investigated and dismissed by the school district itself; unhappy with that outcome, the students make a scene at a school board meeting with wild accusations, and as a result of that pressure, the ICCSD caves and places

the coach on leave, which its employees admit was the likely motive behind the complaints in the first place. There is a clear public interest against school employees being forced out of their jobs by angry parents and students making wild, unfounded allegations for the purpose of ousting that employee. The fact that Villarini was placed on leave due to improper reasons is buttressed by a number of facts—there was nothing in Villarini's personnel file regarding the pretextual reason for her being placed on leave (social media posts), and in fact Deputy Superintendent Ramey ordered her placed on leave before he had even seen the alleged post that purportedly caused it. ICCSD and its representatives admit that the norm was for a coaching contract to be renewed, and Villarini wanted to return as coach both during the season when she was placed on leave and the following season. At a minimum there were genuine issues of material fact on the basis for the ICCSD placing Villarini on leave that should have precluded summary judgment on this issue.

The district court noted that ICCSD did not make its employment contract with Villarini part of its summary judgment record. (App. 170). With respect to the pretextual basis for her being placed on leave, the district court draws inconsistent and improper conclusions. The purported basis for relieving Villarini of her duties was a social media post that some felt may have indirectly referenced

the students who spoke at the school board meeting. There was nothing in the record stating when the post, which was a tribute to her grandmother, was made. The district court in discussing that post and its generally innocuous nature, said noted, "Assuming it was posted shortly after the meeting, however, such an interpretation [that is referenced the statements at the board meeting] would not be unreasonable." (App. 161 fn. 2). That is the opposite of what the district court is supposed to do. In ruling on a motion for summary judgment, the court is required to examine the record before it in a light most favorable to the party opposing the motion. *Sandbulte v. Farm Bureau Mut. Ins. Co.*, 343 N.W.2d 457, 464 (Iowa 1984). Every legitimate inference that reasonably can be deduced from the evidence should be afforded the resisting party. *Scheckel v. Jackson County, Iowa*, 467 N.W.2d 286, 289 (Iowa Ct. App. 1991). If two legitimate, conflicting inferences are present, the court should rule in favor of the non-moving party. *Eggiman v. Self-Insured Services Co.*, 718 N.W.2d 754, 763 (Iowa 2006). Rather than draw the inference that favors Villarini, the district court drew the inference that favored ICCSD. Likewise, the district court misconstrued the facts by stating, "Sometime after the meeting in question, Villarini made another Facebook post . . . ." (App. 160). Again, the record did not show the date of the post and the district court chose to interpret this part of the record in the light most favorable to

ICCSD. Furthermore the district court inappropriately disregards the admission, made by Chase Ramey, the district's Deputy Superintendent, that it would have been improper for ICCSD to place Villarini on leave on the basis of the board meeting allegations because those allegations had been investigated by ICCSD and were determined to be unfounded. (App. 378). This admission, made by ICCSD management, should satisfy the elements of wrongful discharge in violation of public policy. Yet the district court chose to disregard the admission, again misapplying summary judgment standards.

The district court further ignored Villarini's breach of contract claims, and somehow held that it could grant summary judgment to ICCSD even though they failed to make the contract in question part of the summary judgment record. (App. 30).

The district court should have denied ICCSD's motion for summary judgment on the wrongful discharge count.

CONCLUSION

Villarini presented genuine issues of material fact, and ICCSD was not entitled to judgment as a matter of law. Therefore, the district court erred in granting the ICCSD's motion for summary judgment. As a result the case should be remanded to the district court and reset for trial.

REQUEST FOR ORAL ARGUMENT

Appellant hereby requests to be heard on oral argument upon submission of this case.

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ATTORNEYS FOR APPELLANT

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

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_/s/James Weston_____ January 10, 2024
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